

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHC Holdings, LLC, a Kansas limited liability company,

Case No. 2:17-cv-02718-KJD-PAL

Plaintiff,

ORDER

JP Denison LLC, a Nevada limited liability company,

Defendant.

Presently before the Court is Plaintiff SHC Holdings' Motion to Strike (#15). Defendant JP Denison filed a response in opposition (#18) and Countermotion to Set Aside Default (#19). Plaintiff filed a response (#22) in opposition to the countermotion.

I. Background/ Procedural History

Plaintiffs filed the present action on October 25, 2017. Defendant JP Denison was personally served with summons and complaint on November 28, 2017. Proof of service was filed on December 6, 2017. Defendant's answer was due on December 19, 2017. Plaintiff's counsel did not inform Defendant that they were moving for entry of default or inquire about Defendant's intention to proceed.

On January 2, 2017 the Clerk of the Court entered default against JP Denison. On

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2 January 5, 2018, Defendant filed its answer. On December 29, 2017, Plaintiff filed its motion for
3 default judgment. On March 16, 2008, Defendant filed the present motion to set aside entry of
4 default. Plaintiff did not notify Defendant of its intention to apply for default.

5 **III. Analysis**

6 Pursuant to Federal Rules of Civil Procedure 55(c), a court may set aside entry of default
7 “for good cause shown.” The “good cause” standard is the same standard that governs vacating
8 a default judgment under Rule 60(b). See Franchise Holding II, LLC v. Huntington Restaurants
9 Group, Inc., 375 F.3d 922, 925 (9th Cir. 2004). The law favors deciding a case on its merits.
10 See id. Thus, a default judgment is appropriate only in extreme circumstances. TCI Group Life
11 Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001). The Court considers three factors in
12 analyzing good cause: (1) whether the defaulting party engaged in culpable conduct leading to
13 the default; (2) whether the defaulting party has a meritorious defense; and (3) whether vacating
14 the entry of default would prejudice the plaintiff. See Franchise Holding, 375 F.3d at 926. The
15 court has discretion to deny the motion to set aside default if any one of the three factors favor
16 plaintiff. See id. For the reasons stated *infra*, the Court finds that Defendant has shown good
17 cause to vacate the entry of default

18 A. **Culpable Conduct**

19 When examining culpable conduct, the court concurrently examines any excusable
20 neglect of the defaulting party. See id. at 927. Defendant’s conduct is culpable if it “received
21 actual or constructive notice of the filing of the action and failed to answer” or otherwise defend.
22 Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 690 (9th Cir.
23 1988). A defendant’s failure to answer, however, may be excused depending on the reason for
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1 the delay if defendant acted in good faith. See TCI Group, 244 F.3d at 696. Further, conduct is
2 culpable only where the explanation of the default is consistent with a devious, deliberate, willful
3 or bad faith failure to respond. See Employee Painter's Trust v. Ethan Enters., 480 F.3d 993,
4 1000 (9th Cir. 2007).

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6 Here, Defendant's late response was made with good faith as it had been in discussion
7 with Plaintiff for an extension on time in filing its answer. During these negotiations, which
8 immediately preceded winter, Plaintiff proceeded with its application of default. Defendant had
9 contracted Plaintiff's attorney's multiple times seeking extension of time to file the answer, but
10 received no response. Once the Defendant learned that Default had been entered, Defendant
11 immediately filed an answer.

12 **B. Meritorious Defense**

13 To succeed on a motion to set aside a default, the defendant must set forth specific facts
14 that constitute a defense. See Franchise Holding, 375 F.3d at 926. Further, mere general denial,
15 without facts to support it, is not sufficient. See id. Here, Defendant has asserted both legal and
16 factual defenses to Plaintiff's patent and copyright infringement claims.

17 **C. Prejudice**

18 Plaintiff argues that it will be prejudiced if default is set aside. However, the rules favor
19 the resolution of cases on their merits. See TCI Group, 244 F.3d at 695-696. Here, the answer
20 was filed three days after the Plaintiff applied for default: there is no actual prejudice to the
21 Plaintiff. Further, having to litigate a case on its merits never constitutes prejudice.

22 **D. Motion to Strike Answer**

23 Having granted Defendant's motion to set aside default, Plaintiff's motion to strike is

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2 denied as moot.
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4 **IV. Conclusion**
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6 Accordingly, IT IS HEREBY ORDERED that Plaintiff SHC Holdings' Motion to Strike
7 (#15) is **DENIED** as moot;
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9 IT IS FURTHER ORDERED that Defendant JP Denison's Countermotion to Set Aside
10 Default (#19) is **GRANTED**;
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12 IT IS FURTHER ORDERED that the Clerk of the Court **VACATE** Entry of Default
13 (#12).
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15 Dated this 26th day of June, 2018.
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Kent J. Dawson
United States District Judge